

Application No. 09/922,996
Amd. Dated: 24 March 2005
Reply to Office Action mailed December 28, 2004

REMARKS/ARGUMENTS

Claims 1-38 are pending in the present application. Claims 7, 14-18, 23, 28-30 and 37-38 have been withdrawn from consideration. This paper contains no amendments to the claims. Reconsideration of this Application is respectfully requested.

35 U.S.C. §102 Rejections

Claims 1-6, 8-13, 19-22, 24-27 and 31-36 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Daniel *et al.* (6,001,118), hereinafter “Daniel.” Applicants traverse this rejection on the basis that Daniel fails to teach each and every element recited in the claims.

The Examiner cites text at column 12, lines 1-33 and states that Daniel’s
“. . . item 292 is considered a latch, defined as a device to get hold of or obtain another item that is used to get a hold of the guide-wire.”

Applicants respectfully find the above definition of a “latch” to be ambiguous and/or redundant. In particular, Applicants find the statement unclear, especially regarding whether “a device” or “another item” is used to “get a hold of the guidewire.”

The Examiner further states that

“the latch of Daniel is capable of being releasably engageable with the capture element to retain the capture element in the deployed configuration.”

Applicants respectfully disagree with the Examiner’s above characterization of the teachings of Daniel. Nowhere does Daniel teach item 292 as being capable of releasably engaging the capture element. On the contrary, in the cited text, item 292

is described as a “fixed collar.” Fixed collar 292 is taught, explicitly or inherently, to be a fixed connection between the distal end of expandable member 290 and core wire 284. The Examiner states, in regard to claims 2-5, that “the capture element (290) is fixed to the guide-wire.” Applicants concur with this statement and point out that Daniel teaches that the only location of this fixed connection is through fixed collar 292. Fixed collar 292, being fixedly and unreleasably interposed between two elements, cannot be considered as a latch. Therefore, item 292 cannot be considered the latch element required by applicant’s claims.

Regarding claim 1, Daniel contains no explicit or inherent teaching of item 292, or any latch element being releasably engageable with the proximal end of the capture element, as required by claim 1, in part:

... at least one latch fixed to the guidewire distal region and
being releasably engageable with the proximal end of the
capture element ... (emphasis supplied)

Daniel’s item 292 is clearly shown and described as being connected with the distal end of the capture element, instead of being engageable with the proximal end of the capture element, as required of the latch in Applicants’ claims. Daniel teaches the proximal end of capture element 290 as being coupled to movable plunger 288, instead of being coupled to fixed collar 292 (ibid.).

In summary, item 292 of Daniel is located at the opposite end of the capture element from Applicants’ latch; item 292 is not releasably engageable with any part of the capture element; and item 292 cannot reasonably be considered as a latch of any kind. Therefore, in view of the above arguments, Daniel fails to anticipate claim 1 because the reference does not teach each and every element recited in the claim.

Claim 2 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Claim 3 is apparently rejected by considering Daniel's collar 288 to teach a stop element required, in part, by the claim. Applicants aver that Daniel fails to teach each and every element recited in claim 3:

The device of claim 1 wherein the capture element is removably slidable along the guidewire, the capture element having been selectively placed about the guidewire and pushed onto the guidewire distal region, the device further comprising a stop element disposed on the guidewire distal region, the stop element being capable of blocking advancement distal thereto by the distal end of the capture element.

Daniel does not teach a capture element that is removably slidable along a guidewire, as required, in part, by pending claim 3. Rather, the distal end of Daniel's expandable member 290 is longitudinally fixed to core wire 284 through fixed collar 292 (see col. 11, line 51 - col. 12, line 33). Daniel's collar 288 also does not teach the function required of the stop element in claim 3. As described above, collar 288 slides over core wire 284 and is fixedly coupled to proximal end 302 of expandable member 290. Therefore, collar 288 is not capable of blocking advancement distal thereto by the distal end of the capture element. Additionally, Claim 3 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Claim 4 is apparently rejected by considering Daniel to teach "at least one latch (292) positioned between the distal ends of the capture element." Applicants aver that the Examiner's statement of rejection is ambiguous with respect to the

plurality of “distal ends,” and mischaracterizes the teachings of Daniel. Claim 4 requires, in part, that

... at least one latch is positioned between the distal and proximal ends of the capture element when the capture element is in the closed configuration (emphasis supplied).

As described above, Daniel’s fixed collar 292 cannot be considered a latch. Fixed collar 292 is fixedly and unreleasably located within the distal end of the capture element, and thus cannot be considered to be positioned between the distal and proximal ends of the capture element, as required by the claim. Daniel fails to teach each and every element recited in claim 4, which depends from claim 1 and is also patentable for at least the reasons discussed above regarding claim 1.

Claim 5 is apparently rejected by considering Daniel to teach “an inversion stop (288 or 294) fixed to the guide-wire.” Applicants respectfully disagree with the Examiner’s characterization of the teachings of Daniel with respect to element 288. Daniel’s collar 288 also does not teach the structure or function required of the stop element in claim 5:

The device of claim 1 further comprising a first anti-inversion stop fixed to the guidewire at a location distal of the at least one latch, the first anti-inversion stop being capable of preventing advancement distal thereto by the proximal end of the capture element.

As described above, collar 288 slides over core wire 284 and is fixedly coupled to proximal end 302 of expandable member 290. Therefore, collar 288 is not fixed to the guidewire, as required, in part, by claim 5. Additionally, claim 5 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Regarding claims 6- 9, the Examiner contends that Daniel discloses . . . the device further comprises a hollow deployment rod (282) disposed about the guide-wire. The deployment rod pushes the capture element along the guide-wire and over the at-least one latch (292) that transforms the capture element from the closed configuration to the deployed configuration. The deployment rod comprises a catheter (figs 19, 20 a-b).

Applicants respectfully disagree with the Examiner's characterization of the teachings of Daniel. As described extensively above, Daniel's fixed collar 292 cannot be considered a latch. Additionally, Daniel's outer tube 282 is not slidingly disposed about core wire 284, so outer tube 282 cannot push expandable member 290 along core wire 284. Instead, core wire proximal end 300 is coupled to transition tube 286, which is coupled to outer tube 282. None of the three elements core wire 284, outer tube 282, and transition tube 286 is moveable with respect to another of the three elements (ibid.).

To transform Daniel's expandable member 290 from the closed configuration to the deployed configuration, pressurized fluid is delivered through lumen 296 in outer tube 282. The pressurized fluid enters transition tube 286 and travels about the periphery of inner core wire 284, thus forcing movable plunger/collar 288 to move distally along core wire 284 toward collar 292. Thus, the movement of the proximal end of Daniel's expandable member 290 is accomplished by hydraulic pressure acting on plunger 288. Daniel's embodiments shown in Figs. 19, 20 A-B have no mechanical actuation, such as a rod abutting and pushing on the proximal end of an expandable member. Therefore, Daniel fails to anticipate claim 6 because the reference does not teach each and every element recited in claim 6. Additionally,

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Claim 6 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Claim 8 depends from claim 6, which depends from claim 1. Therefore, claim 8 is patentable for at least the reasons discussed above regarding claims 1 and 6.

Regarding claim 9, the Examiner contends that Figs. 19, 20 A-B teach a deployment rod comprising a catheter. Applicants respectfully disagree with the Examiner's characterization of the teachings of Daniel regarding Figs. 19, 20 A-B. Of the various distal protection devices shown in Daniel, Figs. 19, 20 A-B do not illustrate a catheter, or an interventional catheter, slidably disposed about the protection device as required, in part, by the claim. Claim 9 also depends from claim 6, which depends from claim 1. Therefore, claim 9 is patentable for at least the reasons discussed above regarding claims 1 and 6.

Claims 10-13, 19-22, 24 and 25 depend directly or indirectly from claim 1 and are patentable for the reasons discussed above regarding claim 1.

Claim 26 is apparently rejected by considering Daniel to teach "at least one latch (292) that is suitable for engagement with the capture element and is fixed to the guide-wire (284)." Applicants respectfully disagree with the Examiner's characterization of the teachings of Daniel with respect to element 292. Daniel's fixed collar 2292 also does not teach the structure or function required of the latch element in claim 26:

The device of claim 1 wherein the at least one latch has distal and proximal ends, and a normal shape and size suitable for engagement with the proximal end of the capture element, the at least one latch being reversibly operable to allow the proximal end of the capture element to slide there over.

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Daniel's fixed collar 292 is not taught to be suitable for engagement with the proximal end of the capture element, nor is fixed collar 292 taught to be reversibly operable to allow the proximal end of the capture element to slide there over. Claim 26 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Claim 27 depends from claim 26, which depends from claim 1. Thus, claim 27 is patentable for the reasons discussed above regarding claims 1 and 26.

The Examiner has failed to point out any part of Daniel that is considered to teach the specific limitations of claim 31, as required under 37 C.F.R. § 1.104 (c) 2. The Examiner has combined the rejection of claim 31 with the rejection of claims 10-13, and has cited elements in Daniel where a filter (290) or capture element comprises a tubular braid of filaments. However, no part of Daniel has been cited to teach a latch comprising a tubular braid of filaments, as required by claim 31. The latch of the instant invention is distinct from the capture element, and previous citations to fixed collar 292 do not include any teachings of a tubular braided structure for collar 292. Applicants contend that there is no tubular braided latch taught in Daniel. Additionally, claim 31 depends from claim 26, which depends from claim 1. Thus, claim 31 is patentable for the reasons discussed above regarding claims 1 and 26.

The Examiner has failed to point out any part of Daniel that is considered to teach the specific limitations of claims 32 and 33, as required under 37 C.F.R. § 1.104 (c) 2. The Examiner has combined the rejection of claims 32 and 33 with the rejection of claims 24-27. However, no part of Daniel has been cited to teach a latch comprising one or more latch engagement surfaces, as required, in part by claims 32 and 33. Previous citations to Daniel's fixed collar 292 do not include any teachings of latch engagement surfaces for the collar. Applicants contend that there is no latch engagement surface taught in Daniel. Additionally, claims 32 and 33 depend directly

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or indirectly from claim 26, which depends from claim 1. Thus, claims 32 and 33 are patentable for the reasons discussed above regarding claims 1 and 26.

The Examiner has failed to point out any part of Daniel that is considered to teach the specific limitations of claims 34-36, as required under 37 C.F.R. § 1.104 (c). 2. The Examiner has combined the rejection of claims 34-36 with the rejection of claims 6-9, and has cited elements allegedly teaching a deployment rod. However, no part of Daniel has been cited to teach a closing rod, as required, in part, by claims 34-36. The closing rod of the instant invention is distinct from the deployment rod. Applicants contend that there is no closing rod taught in Daniel. Additionally, claims 34-36 depend from claim 26, which depends from claim 1. Thus, claims 34-36 are patentable for at least the reasons discussed above regarding claims 1 and 26.

In view of the above remarks, Applicants reiterate their contention that Daniel fails to anticipate the claims because the reference fails to teach each and every element recited in the claims. Applicants respectfully request that the Examiner reconsider the outstanding rejections and that they be withdrawn.

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CONCLUSION

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (978) 739-3075 (Eastern Time).

Date: *24 March 2005* Respectfully submitted,



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